

Message Text

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PAGE 01 CANBER 01526 150520Z

11

ACTION L-03

INFO OCT-01 EA-11 IO-14 ISO-00 CIAE-00 DODE-00 PM-07 H-03

INR-10 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SPC-03

SS-20 USIA-15 DPW-01 ACDA-19 DRC-01 OIC-04 AF-10

ARA-16 EUR-25 NEA-10 /186 W
----- 104194

R 140801Z MAR 74

FM AMEMBASSY CANBERRA

TO SECSTATE WASHDC 2780

USMISSION GENEVA

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E.O. 11652: N/A

TAGS: ICRC, PARM AS

SUBJ: GENEVA CONFERENCE ON LAW OF WAR

REF: (A) STATE 048509 :B) GENEVA 1591; (C) CANBERRA
1451

1. DCM AND POL COUNS HAVE REGISTERED US CONCERN OVER AUSTRALIAN POSITION REGARDING WARS OF LIBERATION PROPOSAL IN PRELIMINARY DISCUSSION WITH SENIOR DEPARTMENT OF FOREIGN AFFAIRS OFFICIALS. HUGH GILCHRIST, DFA ASSISTANT SECRETARY FOR LEGAL AFFAIRS, DICTATED SHORT STATEMENT OF AUSTRALAINA POSITION IN PRESENCE OF POL COUNS. GILCHRIST MEMO IS QUOTED BELOW.

2. IN ABSENCE OF TEXT AND OF LEGAL HISTORY, AND IN VIEW OF TECHNICAL COMPLEXITY OF FAST MOVING CONFERENCE NEGOTIATIONS, EMBASSY IS AT DISADVANTAGE IN PRESSING THIS MATTER IN CANBERRA, BUT WE WILL DO OUR BEST. SINCE US MISSION GENEVA AND DEPARTMENT HAVE SUPERIOR DOCUMENTATION AND EXPERTISE, BELIEVE YOU ARE IN BETTER POSITION TO ADDRESS THIS QUESTION EFFECTIVELY WITH AUSTRALAIN
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PAGE 02 CANBER 01526 150520Z

REPRESENTATIVES.

3. TEXT OF GILCHRIST MEMO FOLLOWS:

4. QUOTE NEW PARA 2 TO ARTICLE 1 OF DRAFT PROTOCOL 1
HAS BEEN CIRCULATED BY ALGERIA, CAMEROON, EGYPT , LIBYA,
NIGERIA, NORWAY, SYRIA, PAKISTAN AND YUGOSLAVIA. TEXT
IS AS FOLLOWS:

INNER QUOTE THE SITUATION REFERRED TO IN THE PRECEDING
PARAGRAPH INCLUDE ARMED STRUGGELS WAGED BY PEOPLES IN THE
EXERCISE OF THEIR RIGHT OF SELF-DETERMINATION, AS
RECOGNIZED BY THE CHARTER OF THE UNITED NATIONS AND DEFINED
BY THE DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW
CONCERNING FRIENDLY RELATIONS AND COOPERATION AMONG STATES
IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS END
INNER QUOTE.

5. QUOTE PARA 1 OF ARTICLE 1 OF THE PROTOCOL AS DRAFTED
BY THE ICRC, READS AS FOLLOWS,

INNER QUOTE THE PRESENT PROTOCOL, WHICH SUPPLEMENTS THE
GENEVA CONVENTIONS OF AUGUST 12, 1949, FOR THE PROTECTION
OF WAR VICTIMS SHALL APPLY IN THE SITUATION REFERRED TO
IN ARTICLE 2 COMMON TO THESE CONVENTIONS END INNER QUOTE.

6. QUOTE AUSTRALIA WAS INVITED TO CO-SPONSOR AND WAS
AUTHORIZED TO DO SO ON 8 MARCH. IT IS CONSIDERED THAT THE
NEW PARA 2 IS REASONABLE AND PROBABLY NECESSARY IN VIEW OF
POSSIBLE DOUBT ABOUT THE AMIT OF THE EXISTING PARA 2 AS IT
EFFECTS NATIONAL LIBERATION MOVEMENTS. IT COULD ASSIST THE
HUMANIZING OF CONFLICTS IN A COLONIAL SITUATION, FOR EXAMPLE.

7. QUOTE THE NEW PARA 2 WAS TABLED ON 11 MARCH 1963, AND
HOW HAS 18 CO-SPONSORS AS FOLLOWS, THE ORIGINAL NINE
(SEE ABOVE) PLUS AUSTRALIA, IVORY COAST, KUWAIT, SUDAN,
DEMOCRATIC YEMEN, YUGOSLAVIA, ZAIRE, CUBA , MOROCCO,
BURUNDI.

8. QUOTE WE UNDERSTAND THAT A WEO GROUP AMENDMENT,
SPONSORED BY ARGENTINA, AUSTRIA, BELGIUM, FRG,
NETHERLANDS, PAKISTAN AND U.K. BEEN DRAFTED. TEXT
AS FOLLOWS:

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PAGE 03 CANBER 01526 150520Z

INNER QUOTE 1. THE HIGH CONTRACTING PARTIES UNDERTAKE
TO RESPECT AND TO ENSURE RESPECT FOR THE PRESENT PROTOCOL
IN ALL CIRCUMSTANCES.

2. THE PRESENT PROTOCOL SHALL APPLY IN THE SITUATIONS
REFERRED TO IN ARTICLE 2 COMMON TO THE GENEVA CONVENTIONS
OF AUGUST 12 1949, FOR THE PROTECTION OF WAR VICTIMS.

3. IN CASES NOT INCLUDED IN THIS PRESENT PROTOCOL OR IN OTHER INSTRUMENTS OF CONVENTIONAL LAW, CIVILIANS AND COMBATANTS REMAIN UNDER THE PROTECTION AND AUTHORITY OF THE PRINCIPLES OF INTERNATIONAL LAW, AS THEY RESULT FROM ESTABLISHED CUSTOM, FROM THE PRINCIPLES OF HUMANITY AND THE DICTATES OF PUBLIC CONSCIENCE END INNER QUOTE.

9. QUOTE WE UNDERSTAND THAT THERE ARE TWO OTHER TEXTS BEFORE THE COMMITTEE SPONSORED RESPECTIVELY BY ROMANIA AND USSR AND OTHERS. BOTH ARE REPORTED TO BE VERY MUCH MORE EXTREME IN TERMS THAN THE EGYPTIAN ETC. PROPOSAL IN THE DEBATE BELGIUM, U.S., BRITAIN FRANCE AND OTHERS HAVE OPPOSED THE 18 POWER PARA, PRINCIPALLY ON THE GROUND THAT IT INTRODUCED UNDEFINED AND INDEFINABLE CONCEPTS OF A POLITICAL CHARACTER. AUSTRALIA SUPPORTED THE AMENDMENT ON PRAGMATIC GROUNDS BUT DID FIND SOME MERIT IN THE WEO GROUP PROPOSED AMENDMENTS AND URGED EFFORTS TO MARRY TEXTS. THERE WAS CONSIDERABLE SUPPORT FOR THAT SUGGESTION END QUOTE.

DECONTROL MARCH 31, 1977

GREEN

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: FOREIGN POLICY POSITION, MEETINGS, LAW OF WAR
Control Number: n/a
Copy: SINGLE
Draft Date: 14 MAR 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974CANBER01526
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: CANBERRA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740345/aaaabpld.tel
Line Count: 137
Locator: TEXT ON-LINE
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: (A) STATE 048509 ;B) GENEVA 1591; (C,) CANBERRA
Review Action: RELEASED, APPROVED
Review Authority: morefirh
Review Comment: n/a
Review Content Flags:
Review Date: 17 JUN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <17 JUN 2002 by boyleja>; APPROVED <27 JUN 2002 by morefirh>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: GENEVA CONFERENCE ON LAW OF WAR
TAGS: PARM, AS, ICRC
To: STATE GENEVA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005